

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Minutes

August 25, 2004, 10:00 AM – 2:00 PM

Judicial Education Center (JEC), Silver & Turquoise Conference Rooms

CIDVC Website: <http://www.supreme.state.az.us/cidvc/>

CIDVC Members Present:

Hon. William O'Neil, Chair
Hon. George T. Anagnost (Telephonic)
Allie Bones
Mark Carpenter
Larry Farnsworth
Hon. Elizabeth R. Finn
Martha Fraser Harmon
Hon. Sherry L. Geisler
Donna Irwin
Bob James
Mary Ann Lanzilotta, Ph.D
Sheri Lauritano, Esq.
Hon. Michelle Lue Sang
Hon. Denise I. Lundin
Hon. Mary Helen Maley (Telephonic)
Richard McLane
Hon. Mark Moran
John Pombier, Esq.

Members Represented by Proxy:

Jerry Bernstein (Proxy: Sheri Lauritano)
Hon. Danna Hendrix (Proxy: Hon. Mark Moran)
Hon. Ronald Karp (Proxy: Hon. William O'Neil)
Evelyn Buckner (Proxy: Allie Bones)

Members Not Present:

Hallie Bongar White, Esq.
Patricia Klahr
Dr. Anu Partap
Tracey Wilkinson

Staff Present:

Konnie K. Neal
Theresa Barrett
Robert Roll
Janet Scheiderer
Dave Byers
Elizabeth Portillo

Guests:

David Benton, Legislative Officer
Carolyn Passamonte, Commissioner
Sergeant Dave Norton, Phoenix Police Dept.
Rick Rager, Tempe Municipal Court
Hon. Joe Heilman, Superior Court
Dale Wiebusch, AZ Coalition Against Domestic Violence

Quorum: Yes

1. Call Meeting to Order/Welcome and Introductions

Judge O'Neil called the meeting to order at 10:11 AM. All those present introduced themselves. Guests attending the meeting were welcomed.

2. New Materials

The following new materials were distributed to the members:

- a) *Revised Membership List & Update on Membership*
- b) *Workgroup Membership Lists*
- c) *Meeting Schedule for 2004*
- d) *Draft Minutes (May 12, 2004)*
- e) *Legislative Updates*
- f) *State Plan on Domestic Violence*
- g) *Orders of Protection (Sergeant Dave Norton's PowerPoint handout)*
- h) *Proposed NEW Protective Order Forms*
- i) *Proposed DV Criminal Benchbook Revisions*
- j) *PATCHS Program Handout (Dr. Anu Partap)*

Revised/Update of CIDVC and Workgroup Membership Lists

Judge O'Neil asked that the members review and make any necessary corrections to the revised CIDVC membership list and noted to the Committee that Juliana Koob has left the Committee resulting in a vacancy. There are approximately four open positions on the Committee that need to be filled, and Judge O'Neil stated that he would let the Committee know who was available for appointment for these positions as soon as he is informed by e-mail. Judge O'Neil also directed CIDVC members to review and update the workgroup membership lists. Judge O'Neil said that to be a member of a workgroup the individual does not need to be a member of the Committee. Workgroups are open to different appointments by Judge O'Neil.

Meeting Schedule for 2004

Judge O'Neil reviewed the handout that reflected the dates for future CIDVC meetings and stated that there is only one more meeting left for 2004 which is on November 10. It will be at the Supreme Court Building at 1501 W. Washington. He also stressed that if a committee member could not make the meeting either in person or telephonically he or she needed to utilize the proxy process. The CIDVC meeting dates for 2005 will be sent to members via e-mail once Judge O'Neil obtains these.

Approval of February Minutes

The minutes of the May 12, 2004 meeting were reviewed and approved with no further discussion, corrections, deletions, or additions.

3. Legislative Report (David Benton, Legislative Officer)

David Benton gave a brief summary of some of the issues that were raised during the last legislative session.

HB2348-Domestic Relations; Custody; Abuse (Sponsor: Rep. Johnson, Rep. Allen, Rep. Hart, Rep. Laughter and Rep. Quelland) Signed by Governor June 3, 2004; Chapter 320:

- Requires custody evaluators be trained in areas of child abuse and domestic violence. Domestic Relations Committee (with expanded membership) shall develop minimum training standards in these areas.
- Prohibits sole or joint legal or physical custody of a child to parent who is a registered sex offender or convicted of 1st degree murder of child's parent. The Court may consider that the convicted parent was a victim of domestic violence.

HB2317-Landlord Tenant, Domestic Violence (Sponsor: Rep. McClure, Rep. Biggs, Rep. Bradley, Rep. Hubbs, Rep. Huffman, Rep. O'Halleran, Rep. Prezelski) Signed by Governor May 11, 2004, Chapter 222:

- Prohibits rental agreements from containing any provision that either waive or limit the tenant's right to summon a peace officer or other emergency assistance in response to domestic violence, or mandates a tenant to agree to monetary or other penalties for summoning a peace officer or other emergency assistance in response to domestic violence.

HB2208-Domestic Violence; Diversion; Repeal (Sponsor: Rep. Tully, Rep. Allen, Rep. Gullett, Rep. Hubbs, Rep. Miranda) Signed by Governor April 7, 2004; Chapter 52:

- Strikes language that allows the courts to suspend disposition of defendant, post conviction, and order deferment of defendant to probation.
- Upon successful completion of probation conditions, the court could dismiss all proceedings.

HB2440-Unemployment Insurance (Sponsor: Rep. Hanson, Rep. Allen, Rep. Gray, Rep. Konopnicki) Signed by Governor May 20, 2004; Chapter 251:

- Deals primarily with unemployment insurance matters, but prohibits DES from disqualifying a victim of domestic violence from receiving unemployment benefits if the victim becomes unemployed because of domestic violence.
- Benefits awarded pursuant to this provision cannot be charged against the employer's account. SB1206 was headed in the same direction.

David also discussed the following bills that were not on the handout only because they did not go anywhere in the last session, and he believes that they will come back in the next session:

- SB1160-Domestic Violence Assessments
- SB1196-Reporting Requirements for the AOC regarding Orders of Protection
- HB2242-Redefine the term of Harassment
- HB2304-Assault of a Spouse

David indicated that the Coalition will likely present legislation. However, no details are available at this time.

Judge O'Neil stated that John Pombier has agreed to be the Chair of the DV Legislative Workgroup and asked David Benton to join in the discussions of the workgroup. Also, if members

are interested in joining the DV Legislative Workgroup, they should contact John Pombier, Konnie Neal, or Judge O'Neil.

4. State Plan on Domestic Violence (Allie Bones)

Allie Bones made a presentation on the State Plan on Domestic and Sexual Violence. The concept for the State Plan came about in the year 2000, and the legislature developed a task force to develop a state plan on domestic violence and sexual assault. However, over the course of a couple of years the task force was unsuccessful in developing the document. When Governor Napolitano took office and brought together the Commission to Prevent Violence Against Women, she gave them the task of producing the state plan on domestic and sexual violence. The vision for the document is to have a reduction in the incidences of domestic violence and sexual assaults in Arizona. The group put forward six guiding principles around the development of the plan that the recommendations followed.

Six subcommittees were formed to develop the components of the plan. The subcommittees met from June through December 2003 to develop the recommendations contained within the state plan. In the prevention/early intervention, the focus was mainly on areas of prevention and early intervention by identifying those at risk of violence at an early stage. The Victim Services/Crisis Response was divided into two categories: Direct Services and System Changes. Direct Services which focused on areas that impact the victim at the victim level. System Change focused on those things that are on a systems level with impact on victims' services and crisis responses. Allie reviewed the sections of the plan document with the Committee, and Judge O'Neil encouraged the members to review this document.

5. Orders of Protection (Sergeant Dave Norton, Phoenix Police Department)

Judge O'Neil introduced Sergeant Dave Norton of the Phoenix Police Department and said that Sergeant Norton had asked to make a recommendation and suggestions for revising domestic violence statutes and protective order forms from a law enforcement perspective. Sergeant Norton stated that he was speaking from a perspective of someone who deals with orders of protection constantly and realizes that there are some problems. He has served on the DRC, Child Support Committee, and the Family Court Advisory Council. Sergeant Norton also invited Judge Joe Heilman to help speak on this topic as well. Judge O'Neil stated to the members that they each had Sergeant Norton's Power Point presentation to follow along as Sergeant Norton discussed his presentation.

Sergeant Norton stated that *ARS* 13-3601 through 13-3602 were initially passed in 1998 and have been revised annually through 2004. Judge O'Neil pointed out to the members that the statutes of 13-3601 through 13-3602 are also in the State Plan Document on page 77. Sergeant Norton discussed the following problems in detail: definitions, exemptions, possession of a residence, and service of orders. After the presentation Sergeant Norton asked for any suggestions or feedback.

Sheri Lauritano, City of Phoenix Prosecutor, stated that there should not be a "pocket veto," because often the victims (which the majority are women) will invite the offenders to come back for various reasons; this causes an unintentional consequence of fewer people obtaining protection

orders. Sheri also said that giving victims five days on the issue of property is sufficient time for victims to relocate.

Judge Ellie Finn said that on the issue of service, the language that was in Sergeant Norton's presentation was the kind of language that she and Judge Heilman wrote last week at a west valley Chiefs of Police meeting. On the subject of the exclusive use of the household, Judge Finn did not see a problem in this area; however, from a training standpoint, a judge can limit the exclusive use to be five to seven days. Judge Finn stated that law enforcement needs to forward these matters to the prosecutor's office when they determine orders have been violated.

Judge O'Neil asked Judge Joe Heilman to submit his proposal to the Legislative Workgroup and invited Judge Joe Heilman to join the workgroup as well.

Martha Harmon asked Sergeant Norton if this was being brought forth officially on behalf of Phoenix Police Department and City of Phoenix or from a group of concerned professionals. Sergeant Norton stated that he is bringing this forward as the statewide law enforcement representative on the Domestic Relations Committee (DRC) and he is making a presentation on this to DRC next month for feedback; he will work through the legislative efforts for DRC.

6. PATCHS Program

Judge O'Neil stated that Dr. Partap was not present at today's meeting to present on the PATCHS Program but encouraged all the members to review the handouts that reflected her program.

7. DV Automation Trainer Report

Pat Wuensche was not present to deliver DV Automation Trainer Report, but Judge O'Neil stated that all the work that she has done is appreciated. She has worked diligently in the "front lines" of the courts working through problems and issues with protective orders to ensure the information is passed on properly to CPOR.

8. Workgroup Reports

DV Education Workgroup (Judge Mark Moran, Chair):

Judge Moran reported that his workgroup wants to determine those court issues that the Committee identifies as necessary training for all judges. These issues could be for New Judge Orientation and the Annual Judicial Conference; given the excellent participation in the past, CIDVC should continue to provide domestic violence training at the Arizona Judicial Conference. The DV Education Workgroup proposed the following other specific ideas:

- 1) To formalize a list of frequently asked protective order questions for both new and old judges;
- 2) To update present training materials and
- 3) To update the pamphlet (a purple booklet issued by the AOC in 2001) this is very popular with the litigants.

The DV Education Workgroup also solicited some ideas from other judges, courts, and service providers. One of the suggestions was to put together a master quiz for judges, and Judge Klatt from Tucson's City court shared his list of top 30 questions or dilemmas for judges in orders of protection cases. The Education Workgroup identified two specific education issues on forms: one is the certificate of service, and the other involves concerns with AZTEC courts having the box on the bottom of the form which says "Brady applies," confuses some judges.

Judge Moran stated that another issue, with which he is not too familiar, is the Video Victim Services which is not available in his county. He invited discussion on this option for victims who cannot physically go into the court to obtain an order of protection; instead of physically appearing, victims may appear via video, and judges can review evidence for the victims and issue necessary orders. Judge Moran would like to disseminate this video option statewide as that would be better for the victims who physically cannot go into court. Allie Bones indicated that she is surveying some of the rural shelters, advocates and courts to find out if the video victim service would be helpful to them, particularly in the more remote areas where one may have to travel far distances to go to court in order to obtain an order of protection. Judge Moran stated that this would be great for the victim, especially if the victim is in the hospital. Judge O'Neil agreed that this would be a great service for victims.

DV Criminal Workgroup (Judge Mark Moran, Chair):

Judge Moran pointed out to the members that they each had a packet of the proposed revisions to the Criminal Domestic Violence Benchbook necessitated by the changes in the law. The first was the Victims' Rights Statement to be read by judges at the beginning of the docket which is effective as of today, August 25, 2004.

The second change is in Chapter 12, section A which reflects the repeal of 13-3601(M) provision formerly the diversion provision that judges had the authority to use at the time sentencing; under this provision, the defendant could undergo treatment and successfully obtain a dismissal a domestic violence conviction or case. This has been repealed effective today.

Judge Moran stated that the Workgroup needed to rework the language, put a period after 2004 strike a judicial officer, and indicate that a prosecutor may offer diversion prior to filing charges.

MOTION: To rework the language of the amendment in that specific aspect and adopt of the corrections to the Domestic Violence Criminal Benchbook

VOTE: In favor-Unanimous (verbal vote)

DV Benchbook Workgroup (Allie Bones on behalf of Evelyn Buckner):

Allie Bones spoke on behalf of DV Benchbook Workgroup Chair Evelyn Buckner, who was not able to attend the CIDVC meeting. Allie stated that Evelyn wanted the group to know that she wanted to have a meeting between now and the end of the year to address any revisions that are needed to the DV Benchbook and to add the new order of protection forms once they are approved. Evelyn will be sending out an e-mail to have the meeting scheduled.

9. Proposed New Protective Order Forms (Bob James & Judge Elizabeth Finn)

Prior to Bob James' New Protective Order Forms presentation, Judge O'Neil apologized to the Committee stating that it was anticipated that the actual crafting of the forms would not be difficult and that the forms would be in everyone's hands long ago; however, the final forms were just printed out yesterday, and that is why the members did not get the proposed forms until today's meeting. The delay was not intentional, but the workgroup got into further discussion of other problems and had to work through additional protective order issues that arose.

Bob James also expressed his apologies to the committee members and stated that his workgroup by no means meant to "thrust" their work upon them at the very last minute. Following is Bob's discussion on the proposed new protective order forms:

ISSUES:

- 1.) The concern regarding the improper use of the "After Hearing" box in the top right caption of the Order of Protection. There was confusion that if that box happened to be checked, regardless of anything else, it would somehow invoke a Brady application to that order.
- 2.) Another issue raised by a judge, is related to case law from a 2001 case from the Circuit Courts of Appeal of the United States Federal Courts system. This issue caused a lot of discussion among workgroup members, but the issue has been addressed, and the protective order forms have been modified to reflect those changes.

REVIEW OF MAIN CHANGES TO THE ORDER OF PROTECTION FORM:

1.) After Hearing Box & Additional Data Information Lines:

At the top far right box where the title of the current Protective Order the "After Hearing Box" has been removed. The workgroup could not find any significant value added to keep it. Next, the three lines that reflect the following information: ORIGINAL COURT: _____, DATE ISSUED: _____ & SERVED: _____, and FORMER CASE #: _____ are brand new to the document. This has been a response to concerns that were heard from the Holders of Record throughout the State of Arizona; the concerns relate to being able to track when an order of protection is transferred to two different scenarios. When an order of protection is transferred from a Limited Jurisdiction Court to a Superior Court because of a pending Title 25 action, it is very difficult for the Holders of Record to find the original order because the effectiveness date of the order in place after the transfer relates to service of the original order. The information provided on these three lines gives the Holders of Record that linkage; this comes into play when a court modifies an order of protection which requires tracking procedures.

2.) Defendant Description Box:

There is a slight change to the "Defendant Description Box." Various courts and staff reported that in some situations, social security numbers, driver license numbers, and the issuing state are being obtained, and law enforcement officials stated this was very helpful

information in creating positive identifications for the enforcement of the protection orders. Bob James stated that these were NOT MANDATORY form fields.

Note: Dave Byers stated to Bob James that Congress will most likely be passing a bill that will prohibit the courts from providing this type of information on forms because of privacy issues.

3.) Notice Section Paragraph:

There is a substantial change in the Notice Section of the document. There is a 5th Circuit Court of Appeals, United States Federal Court Systems case that deals with an interpretation of the Brady Law and states that there are some conditions where a court can issue an order, restraining conduct that does not rise to the level of invoking Brady Law. Under the document that is in production right now, the first order paragraph is constructed in such a manner that if it is not altered by a judicial officer, it invokes Brady automatically. Judge Finn said that she spoke with Fannie Hasselbacher, who is the Assistant Chief Counsel for the FBI overseeing Brady. She faxed over the proposed order, and Fannie stated that to avoid invoking Brady, the word “stalk” would have to be removed because our stalking statutes have elements that deal with force and threats of death.

4.) Commit No Crimes Issue:

John Pombier stated that the section that reads, “The defendant shall not commit any other of the acts of domestic violence....” should read, “The defendant shall not commit any crimes,” to include all crimes against the Plaintiff. Judge Finn said that was fine, but we should still include the parenthetical phrase to warn the judges that the paragraph will invoke Brady.

5.) No Contact Section:

The “No Contact” section is a direct result of listening to law enforcement in the field, victims, and victims’ advocates. We need to more clearly define for the defendant how they are restricted; instead of providing an opportunity for defendants to manipulate a protective order, the perspective has been changed so that all contact will be restricted between the defendant and the plaintiff with the exception of anything being checked by the judge. This will be a more feasible order to enforce out in the field. The extra bold line in the form will be removed.

6.) Protective Person:

This section was just streamlined by providing a little bit more room for the name and DOB. Hopefully this will encourage more appropriate data collection for the NCIC.

7.) Civil Standby:

The language was changed in various ways.

8.) Possess No Weapons:

The sentence “poses a credible threat of bodily injury” *will be changed to* “poses a credible threat to the physical safety.”

Judge O'Neil provided the history and explanation of AZTEC impact for new members. He suggested that we not only need uniform, statewide protective order forms, but the forms also need to be user friendly so litigants, victims, offenders, and other affected by protective orders fully understand them.

MOTION: To proceed with the recommended modifications to the Protective Orders

VOTE: In favor-Unanimous (verbal vote)

Judge O'Neil asked Bob James why there is a rush to having these changes done, and Bob James responded that there were a couple of reasons. The changes that were discussed apart from the *Emerson* related changes have been in the works for over a year and half, and they are indirect response to the needs of the courts and law enforcement to actually get better, more enforceable orders out in the community; the sooner the forms are revised, the better they will be. More pressing is the issue regarding the judicial discretion that was identified in the *Emerson* decision. If these forms are reviewed by the necessary committees now, the earliest that courts would use these mandated forms would be mid 2005. If we wait until the next cycle, they would be effective at the end of 2005 or the beginning 2006 to reasonably expect all courts to be required to be in the new format.

Judge Finn added that these forms were finished a year ago February, and at that point, had gone to every committee and received a unanimous approval "in concept" from every committee. There are numerous judges from all around the state asking when these forms will be available for use.

10. *Gonzales v. Castle Rock, Colo.* – Enforcement of OP's (Judge Anagnost)

Judge Anagnost encouraged the members to review the 10th Circuit Federal case that is about a 90 page opinion. This was just for informational purposes.

TASK: Konnie will place this on the CIDVC website.

11. *Lautenberg* – Misdemeanor Records Retention (John Pombier)

John Pombier stated that he was contacted by a member of the Alcohol, Tobacco & Firearms (ATF) about two or three years and again, just recently over the issue that the records retention for misdemeanor convictions of domestic violence is five years in Arizona. If ATF chose to investigate a violation of federal gun law, (a Lautenberg violation) and the records were over five years in the state, ATF would be able to obtain the records they need to prosecute that case. Therefore, ATF has asked that we look at the issue of extending the records retention of domestic violence and misdemeanor convictions beyond the five years so that they have the ability, if they so choose, to do so to prosecute those cases.

John Pombier suggested that retention time for the Domestic Violence case records should be extended to 50 years. Judge Finn stated that from an administrative standpoint that it would be a nightmare, but from a legal standpoint that John was correct.

MOTION: The Committee will recommend that Ted Wilson will go to the committees, as necessary, including the Limited Jurisdiction Committee, to ferret out what is necessary in order to have the law enforced.

VOTE: In favor-Unanimous (verbal vote)

12. CPOR/LPOR Update (Robert Roll & Konnie Neal)

Robert Roll, Arizona Supreme Court, AOC, Information Technology Division, JUSTIS Data Warehouse Manager introduced himself. Robert went over a couple of updates. One of the main updates is that he is meeting with DPS next week to talk about possibly bringing Coconino County into production for CPOR/LPOR. They would get all the full functionality of LPOR that would meet the acceptance of the orders electronically, and those orders would be sent electronically from LPOR through DPS to NCIC, as well. Once that is activated, law enforcement will then have the capability to see at least Coconino County orders that were accepted by the holder of record. Robert stated that Pat Wuensche, DV Trainer, visited all the courts in Coconino County and has also spoken with the Holders of Record to make sure everyone is on the same page on how the orders are supposed to flow.

Robert went over some LPOR and NCIC message samples to show the Committee how much easier and how much formatted it is to read the messages from LPOR. Law enforcement doing queries out in the field will get two responses. They will get the response from NCIC and if there is a protective order in force a response from LPOR as well. As noted in the printouts the NCIC is strung all together with no formatting, compared to the LPOR output which actually gives a breakdown of which PCO code is interacted with it. This will help the law enforcement officers who are in the field with the physical protective order in their hand, if they get the response back from LPOR. What is seen from LPOR is what should be checked on the physical copy. NCIC groups the PCO codes, whereas LPOR keeps it broken out.

Also, Robert pointed out in the packet an update of the numbers of the statistics within CPOR. Robert stated that the error numbers have gone down in areas.

13. Ending Domestic Violence in Arizona Conference:

Martha Harmon talked about the Domestic Violence Conference that will be held on August 31, 2004. According to RSVP's for attendance, there will be a huge turn-out. The Steering Committee has actually had to turn some people away, and over 1,000 people are expected to attend.

14. Call to the Public:

There were no comments from the public.

15. Next Meeting:

The next meeting is on November 10, 2004, 10:00 AM – 2:00 PM, State Courts Building, Conference Room 119 A&B. The teleconference call in number is 602-542-9003.

16. Adjournment:

Judge O'Neil adjourned the meeting at 2:03 pm.